

ORDINANCE NO. \_\_

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
AMENDING AND RESTATING FAIRFAX MUNICIPAL CODE, TITLE 17 (“ZONING”),  
CHAPTER 17.110 (“MEDICAL MARIJUANA DISPENSARIES”) AND REPEALING ARTICLE  
III (“MEDICAL MARIJUANA CULTIVATION”) OF CHAPTER 17.138, TO ADOPT ZONING  
STANDARDS AND RESTRICTIONS FOR COMMERCIAL CANNABIS USES AND CANNABIS  
CULTIVATION FOR PERSONAL USE**

**WHEREAS**, in 1996 the voters of the State of California approved the Compassionate Use Act (“CUA”) (Health and Safety Code §11362.5) to enable persons residing in California who are in need of marijuana/cannabis for medical purposes to possess and cultivate it without fear of criminal prosecution under specified circumstances; and

**WHEREAS**, in 2004 the State enacted the Medical Marijuana Program Act (“MMPA”) (Health and Safety Code § 11362.7 et seq.), to clarify the scope of the Compassionate Use Act, including the circumstances under which qualified patients and their primary caregivers could associate collectively or cooperatively to cultivate marijuana/cannabis for medical purposes without being subject to criminal prosecution; and

**WHEREAS**, in 2011, the Town of Fairfax approved Ordinance No. 759 adopting zoning regulations for medical marijuana dispensaries consistent with the CUA and MMPA; and

**WHEREAS**, in 2015, the State enacted the Medical Cannabis Regulation and Safety Act (“MCRSA,” previously known as the Medical Marijuana Regulation and Safety Act), which adopted comprehensive regulations and licensing for the commercial medical cannabis industry; and

**WHEREAS**, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), which legalized the non-medical use of marijuana by adults over 21 years of age, and created comprehensive regulations and licensing for the adult-use commercial cannabis industry; and

**WHEREAS**, on June 27, 2017, the State approved Senate Bill 94, which repealed MCRSA, amended the MMPA, and consolidated the State licensing schemes applicable to both medical and adult-use commercial cannabis activity under a single regulatory framework titled the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“MAUCRSA”); and

**WHEREAS**, the MAUCRSA recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate state licensed cannabis businesses, including, but not limited to, local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

**WHEREAS**, the MAUCRSA restricts the location of a commercial cannabis business premises within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius (Business and Professions Code, § 26054); and

**WHEREAS**, MAUCRSA provides that any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the State shall be the minimum statewide standards, and a local jurisdiction may establish additional standards, requirements, and regulations (Business and Professions Code, § 26201); and

**WHEREAS**, the Town Council of the Town of Fairfax recognizes the ongoing potential for adverse impacts on the health, safety, and welfare of its residents and business from primary and secondary effects associated with commercial cannabis business activities, such as increased traffic and parking impacts, offensive odors, increased youth exposure and normalization, increased risk of theft or other crimes, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents, and that there is a need to adopt local zoning regulations to avoid or mitigate adverse impacts on the community which may arise from commercial cannabis activity; and

**WHEREAS**, the AUMA, as amended by the MAUCRSA, legalizes cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

**WHEREAS**, the AUMA, as amended by the MAUCRSA, provides that a local jurisdiction shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but that a local jurisdiction may completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2); and

**WHEREAS**, numerous court decisions confirm that a municipality has authority to regulate medical marijuana activities, including personal cultivation of medical marijuana under the CUA and the MMPA (*Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 964-967; see also, *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975); and

**WHEREAS**, the outdoor cultivation of cannabis unregulated by local law poses a risk of adverse effects to the public health, safety and welfare due to the potentially high cash value of the plants and the potential creation of strong odors, aesthetic impacts, noise from equipment and other impacts that can be detectable beyond the property boundaries; and

**WHEREAS**, the indoor cultivation of cannabis has potential adverse effects to the health and safety; including structural damage due to increased moisture and excessive mold growth and a risk of fire and electrocution due to improper wiring or equipment; and

**WHEREAS**, on November 1, 2017, the Town Council adopted Urgency Ordinance No. 809 pursuant to Government Code Section 65858, establishing a forty-five (45) day moratorium on all commercial cannabis uses to the extent allowed by law in light of the passage of the AUMA and MAUCRSA; and

**WHEREAS**, the Town Council extended the moratorium for the full two years authorized under Government Code Section 65858 pursuant to Urgency Ordinance Nos. 812 and 820, to allow the Town to complete its study of potential cannabis regulations; and

**WHEREAS**, the Town Council, Planning Commission and Town staff have conducted numerous meetings, community outreach, and analyses to determine what types of commercial cannabis uses should be allowed to establish in the Town and what appropriate regulations should be required, if any, in light of the passage of the AUMA and MAUCRSA; and

**WHEREAS**, as a result of that study, and in accordance with Business and Professions Code, Sections 26054 and 26200, this Ordinance effects zoning regulations, including buffers for sensitive uses, for the physical establishment of certain commercial cannabis retail uses within Fairfax, while prohibiting all other commercial cannabis uses at this time (including all commercial cultivators, manufacturers, testing laboratories, distributors and microbusinesses), to meet the unique local needs of the community and to protect the public health, safety, and welfare; and

**WHEREAS**, the Town Council of the Town of Fairfax has determined that reasonable regulations regarding the establishment and operation of cannabis delivery-only retailers (also known as non-storefront retailers) and medicinal cannabis storefront retailers in the Town, subject to a commercial cannabis business permit, will provide an appropriate balance between the Town's interests in fostering retail commercial activities and lawful community access to cannabis, while also protecting the public health, safety, and welfare of Fairfax residents; and

**WHEREAS**, it is also the desire of the Town Council to update the Town's regulations applicable to cultivation of cannabis for personal medical use and for personal adult-use for consistency with AUMA, as amended by MAUCRSA, and to protect the public health, safety, and welfare; and

**WHEREAS**, nothing in this Ordinance shall be construed to allow any activity relating to cannabis that is otherwise not expressly allowed in the Fairfax Municipal Code or is illegal under State law, or allow persons to engage in conduct that endangers others or causes a public nuisance; and

**WHEREAS**, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. 841 or to permit any activity that is prohibited under said Act except as mandated by State law; and

**WHEREAS**, the Town Council directed the Planning Commission to consider zoning amendments to address commercial cannabis uses on August 15, 2018; and

**WHEREAS**, the Planning Commission held eight public hearings, and ultimately voted on April 11, 2019 against the proposed zoning text amendments; and

**WHEREAS**, the Town Council held a study session on May 1, 2019 and a duly noticed public hearing on June 5, 2019 concerning proposed commercial cannabis regulations, and has received public comment on the matter; and

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

**Section 1.**     **Recitals.**    The above recitals are true and correct and are hereby incorporated into this Ordinance.

**Section 2.**     **Code Amendment.**    Chapter 17.110, entitled "Medical Marijuana Dispensaries" of Fairfax Municipal Code, Title 17 ("Zoning") is hereby amended and restated as set forth in full on Exhibit "A," attached hereto and incorporated herein by reference.

**Section 3.**     **Code Repeal.**    Article III, entitled "Medical Marijuana Cultivation," of Fairfax Municipal Code, Title 17 ("Zoning"), Chapter 17.138 ("Regulations Applying In Multiple Zoning Districts") is hereby repealed.

**Section 4. General Plan Consistency.** The Town Council finds and determines that the amendments to the Town’s zoning code would, in fact, conform to the Town’s General Plan on the basis of the following:

- (a) The Ordinance permits limited numbers of certain commercial cannabis retail uses in existing commercial zones. This Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-5 to “manage future growth while preserving the area’s natural resources” and with Policy LU-5.1.1, which provides that “[n]ew and renewed development shall occur primarily as infill development;” and
- (b) By allowing local cannabis retailers and mitigating the need for residents to utilize cannabis retailers located in other jurisdictions, the Ordinance is also consistent with Fairfax General Plan Conservation Element, Program CON-1.3.1.4: Educate citizens on primary means to reduce GHG emissions, such as transportation choices and supporting the local economy, including locally-grown foods and local businesses, to reduce GHG emissions; and
- (c) The Ordinance allows cannabis retailers to provide cannabis deliveries in Town. This is consistent with Fairfax General Plan Circulation Element Goal C-6, which seeks to “promote less reliance on single-occupant vehicles” because private delivery services can potentially reduce the need for “errand-running” trips, thereby potentially reducing traffic congestion (General Plan, p. C-3); and
- (d) The Ordinance permits personal cultivation of up to six plants of medical or adult-use cannabis per private residence pursuant to State law, subject to reasonable regulations to minimize potential adverse impacts to surrounding neighbors and the general public. Additionally, the Ordinance limits the number of commercial cannabis retail locations to two and limits storefront retailers to medical-use sales only. No other community in Marin County provides for adult-use cannabis storefront retailers and allowing adult-use storefront retailers in Fairfax could create undue traffic, parking impacts and strain on town’s resources and quality of life. By addressing potential neighborhood and community impacts, this Ordinance is consistent with Fairfax General Plan Land Use Element Goal LU-7 to “preserve community and neighborhood character” and with Objective LU-7.2 to “[p]reserve, maintain, and enhance in a sustainable manner, the existing character, scale, and quality of life in Fairfax’s residential neighborhoods;” and
- (e) By limiting the wattage of indoor grow lights and prohibiting the use of gas products in connection with personal cannabis cultivation, the Ordinance is also consistent with Fairfax General Plan Safety Element, Goal S-3, to minimize risk due to fires, and Objective S-3.1.1 to protect people and property from risks associated with urban and wildland fire.

**Section 5. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional

without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**Section 6. CEQA.** The Town Council hereby determines that this Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h), each as separate and independent bases. This Ordinance is exempt under the general rule that CEQA only applies to projects, which have the potential for causing a significant effect on the environment. Pursuant to State CEQA Guidelines, Section 15061(b)(3) it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would permit limited numbers of certain cannabis retailers in zones where medical marijuana dispensaries and other similar uses are currently permitted, and because it would impose reasonable regulations on personal cultivation of cannabis that was legalized under State law. With respect to personal cannabis cultivation, this Ordinance also qualifies for the Class 3 and Class 4 exemptions because the amendments authorize indoor cultivation in existing structures and, for outdoor cultivation, only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening on private residential property. Additionally, Business & Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes applicable environmental review. The Town Council hereby directs the Town Manager or his/her designee to prepare and file a Notice of Exemption within five business days following adoption of this Ordinance.

**Section 7. Effective Date; Posting.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

**Section 8. Filing with State Licensing Authorities.** The Town Clerk shall submit a copy of this ordinance to the Bureau of Cannabis Control as provided by Business and Professions Code, Section 26055.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 5th day of June, 2019, and duly adopted at the next regular meeting of the Town Council on the \_\_\_ day of \_\_\_\_\_, 2019, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Barbara Coler, Mayor

Attest:

\_\_\_\_\_  
Michele Gardner, Town Clerk Date

## EXHIBIT “A”

### CHAPTER 17.110: CANNABIS USES

#### § 17.110.010 PURPOSE.

The purpose of this Chapter is to impose zoning restrictions on various commercial cannabis businesses authorized and/or licensed by the State of California and personal cultivation of cannabis activities authorized pursuant to state law. This section is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding cannabis businesses that may operate in the Town and personal cannabis cultivation activities pursuant to this Code and state law. This Chapter is in addition to any other business license and regulatory requirements imposed on cannabis businesses by this Code or other applicable state law.

#### § 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

- A. “Adult-use cannabis” or “adult-use” means cannabis or cannabis products intended to be used for non-medical purposes by persons twenty-one years of age or older in conformance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10) and the provisions of State law regarding cannabis use and sale (Health and Safety Code, §11362.1 et seq.), as each may be amended from time to time.
- B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” includes “cannabis” as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code. “Cannabis” shall not include industrial hemp as defined by Section 11018.5 of the Health and Safety Code.
- C. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. For purposes of commercial cannabis cultivation, the term “cannabis cultivation” also includes processing, rolling, storing, packaging, and labeling of non-manufactured cannabis products.
- D. “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- E. “Cannabis distribution facility” means any facility engaged in the procurement, temporary storage, non-retail sales, and transport of cannabis and cannabis products between State-licensed cannabis businesses and any other activity allowed under the State distributor license(s), including, but not limited to, quality control and collection of State cannabis taxes.

- F. “Cannabis manufacturing” means the compounding, blending, extracting, infusing, or otherwise making, preparing or packaging a cannabis product. Cannabis manufacturing includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- G. “Cannabis microbusiness” means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail:
- H. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include “cannabis products” as defined in Business and Professions Code, Section 26001.
- I. “Cannabis retailer” means a facility or premises where cannabis or cannabis products are offered, either individually or in any combination, for retail sale or other sales or transfer to consumers, including an establishment that delivers cannabis and cannabis products as part of a retail sale. For purposes of this Section, “cannabis retailer” also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended. Unless otherwise specified, “cannabis retailer” means both a retailer selling medicinal cannabis and medicinal cannabis products to patients with valid physicians’ recommendations, and a retailer selling adult-use cannabis and cannabis products for adults twenty-one (21) years of age and older. The term “cannabis retailer” includes both storefront retailers and delivery-only retailers unless otherwise specified.
- J. “Cannabis testing laboratory” means a laboratory, facility, entity, or site that offers or performs tests or testing of cannabis or cannabis products.
- K. “Commercial cannabis use” includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes “commercial cannabis activity” as defined in Business and Professions Code, §26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include the activities of a qualified patient or a primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, § 26033.
- L. “Day care center” means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, as defined Sections 1596.76 and 1596.750 of the Health and Safety Code.

- M. “Delivery-only retailer” means a cannabis retailer that conducts cannabis sales exclusively through cannabis delivery from a fixed, physical location that is closed to the public. Also known as a “non-storefront retailer.”
- N. “Fully enclosed and secure structure” means a space within a dwelling unit that complies with the California Building Code, as adopted in the town (“CBC”); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot containing a dwelling unit, having a complete roof and enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. In order to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three- eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.
- O. “Indoor” means within a fully enclosed and secure structure.
- P. “Medicinal cannabis” or “medical use” means cannabis or cannabis products intended to be used for medical purposes in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code §11362.5) and the Medicinal Marijuana Program Act (California Health and Safety Code §11362.7 *et seq.*), as each may be amended from time to time.
- Q. “Outdoor” means any location not within a fully enclosed and secure structure, such as a location exposed to the open air or within a greenhouse.
- R. “Personal cultivation” means cultivation of cannabis for a natural person’s own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. “Personal use” also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis, or by a cannabis cooperative association or any of its members.
- S. “Primary caregiver” shall have the same meaning as the term “primary caregiver” defined in Cal. Health and Safety Code § 11362.7, as may be amended from time to time.
- T. “Private residence” means house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes, or as defined in Cal. Health and Safety Code § 11362.2, as may be amended from time to time.
- U. “Qualified patient” means and includes both a “qualified patient” and a “person with an identification card” as each term is defined in Cal. Health and Safety Code § 11362.7, as amended from time to time.



- V. “School” means of a school providing instruction in kindergarten or any grades 1 through 12 (whether public, private, or charter), but does not include any private school in which education is primarily conducted in private homes.
- W. “State commercial cannabis license” means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended, and includes both an A-license and an M-license, as well as a testing laboratory license.
- X. “Storefront retailer” means a cannabis retailer that conducts cannabis sales at a business premises that is open to the public, and may also conduct cannabis delivery as part of a retail sale.
- Y. “Sell,” “sale,” and “to sell” include any transaction, whereby, for any consideration title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from who the cannabis or cannabis product was purchased.
- Z. “Tutoring center” means a facility that is primarily used to provide supplemental teaching and educational instruction for students in kindergarten or any grades 1 through 12, but is not a school or a private home school in which education is primarily conducted in private homes.
- AA. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. This definition shall not include any private martial arts, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor’s office primarily serving children, or a location which is primarily utilized as an administrative office for youth programs or organizations.

**§ 17.110.030 COMMERCIAL CANNABIS ACTIVITIES PROHIBITED UNLESS SPECIFICALLY AUTHORIZED BY THIS CHAPTER**

- A. All commercial cannabis uses as defined herein (other than as provided under Business and Professions Code Sections 26054(c) and (d), 26080(b), and 26090(e)) are prohibited from establishing or operating in all zoning districts within the Town of Fairfax except and unless expressly permitted by and in conformance with the provisions of this Chapter and/or Chapter 5.56.
- B. All commercial cannabis uses permitted by this Chapter must, prior to establishing and operating any such commercial cannabis use, obtain and maintain at all times (1) a valid state commercial cannabis license, (2) a commercial cannabis business permit pursuant to Title V, Chapter 5.56 of this Code and (3) any other local or regulatory licenses or permits required by this Code or state law.

#### 17.110.040 CANNABIS RETAIL USES.

- A. Cannabis retailers may be permitted subject to the approval of a commercial cannabis business permit pursuant to Chapter 5.56 of this Code, and provided there shall be no more than two (2) cannabis retailer locations at any one time in the following use categories, or in any combination thereof:
1. Medical-use cannabis storefront retailer(s); and/or
  2. Delivery-only retailer(s), which may be medical-use, adult-use or both.

This limit shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, and continues to operate, and which may be permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.050 (“Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries”), below. One retail location may consist of side-by-side licensed premises as defined in 16 California Code of Regulations, Section 5025, in order to permit the licensing and operation of both a medical use storefront retailer and adult-use delivery-only retailer by a single operator.

- B. Cannabis retailers may be permitted in the following zones:
1. Medical-Use Cannabis Storefront Retailers: Highway Commercial (CH) and Central Commercial (CC).
  2. Cannabis Delivery-Only Retailers: Highway Commercial (CH), Central Commercial (CC) and Limited Commercial (CL).
- C. Cannabis retailers shall not be allowed within the specified distances to the following uses that are in existence at the time the cannabis use is established. Specifically, a cannabis retailer shall not locate or establish:
1. Medical-Use Cannabis Storefront Retailers: Within a 600-foot radius of a school, day care center, or youth center or within 250-foot radius of a tutoring center. (See Business and Professions Code, § 26054.)
  2. Cannabis Delivery-Only Retailers: Within a 250-foot radius of a school or within 250-foot radius of a tutoring center. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for cannabis delivery-only retailers near day care centers or youth centers, or other potentially sensitive uses, beyond the radii contained herein.

The distances specified in this Section shall be the horizontal distance measured in a straight line from the property line of the specified use to the closest property line of the lot on which retailer is to be located without regard to intervening structures. (See Business and Professions Code, § 26054(b); Health and Safety Code, § 11362.768(c).)

- D. Cannabis retailers shall meet all standards for development in the underlying zoning district, in the Town’s General Plan, and in any applicable specific plans or master plans, and in addition:

1. Parking shall be provided in accordance with the following:
  - i. Medical-Use Cannabis Storefront Retailers: Town Code § 17.052.030(F) for retail and personal service stores at a rate of three spaces for the first 500 square of gross floor area and one space for each additional 500 square feet thereafter, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
  - ii. Cannabis Delivery-Only Retailers: Town Code § 17.052.030(K) for industrial uses, including wholesale and storage: one space per two employees of the maximum shift, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
2. Size of facility. The size of the facility shall not exceed 1,500 square feet exclusive of restroom facilities and common areas.
3. If an application for a proposed cannabis retailer requires compliance with Chapter 17.020 (“Design Review Regulations”), then notwithstanding any provision of Chapter 17.020 to the contrary, the Planning Commission shall provide a recommendation on such design review application and final approval authority shall vested in the Town Council. The Town Council’s review and decision shall in all respects comply with the criteria set forth in Chapter 17.020.
4. If an application for a proposed cannabis retailer requires a traffic impact permit pursuant to Chapter 17.056 (“Traffic Impact Permit”), then notwithstanding any provision of Chapter 17.056 to the contrary, the Town Council shall not be required to approve the methodology used in the traffic study pursuant to Section 17.056.070.
5. If an application for a proposed cannabis retailer requires a sign permit pursuant to Chapter 17.064 (“Signs”), then notwithstanding any provision of Chapter 17.064 to the contrary, the Planning Commission shall make a recommendation on such sign permit, and final approval authority shall vested in the Town Council. The Town Council’s review and decision shall in all respects comply with the criteria set forth in Chapter 17.064, except signage shall be limited to a single window or wall sign that shall not exceed six square feet in area.

**§ 17.110.050 ADULT-USE CANNABIS DELIVERIES BY CERTAIN EXISTING MEDICAL MARIJUANA DISPENSARIES.**

- A. A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted by the Town to operate a medical marijuana delivery service, may operate as a permitted use in any commercial district, an adult-use cannabis delivery-only service from its then existing premises, subject to each of the following conditions:
  1. The dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times:
    - (a) A valid state cannabis license authorizing adult-use cannabis deliveries issued by the appropriate state licensing authority pursuant to the Medicinal and

Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code, Division 10);

- (b) A commercial cannabis business permit pursuant to Title 5, Division II, Chapter 5.56 of this Code; and
  - (c) Any other state and local licenses or permits required by this Code or state law.
2. All cannabis deliveries must conform to State laws and regulations adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act except as set forth herein regarding the State buffer zone.
  3. No adult-use customers shall be permitted to access or remain in the business premises of a medical marijuana dispensary.
  4. No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary.
- B. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for the conduct of adult-use cannabis deliveries by an eligible, existing medical marijuana dispensary pursuant to this Section, beyond the zoning regulations contained herein.
- C. This Section is not intended to give any person or entity independent legal authority to operate an adult-use cannabis non-storefront retail delivery service, it is intended only to clarify the zoning restrictions regarding certain existing medical marijuana dispensaries that may conduct adult-use cannabis deliveries in the Town pursuant to this Code and state law. This Section is in addition to any other business license and regulatory requirements imposed on medical marijuana dispensaries and non-storefront retail cannabis delivery services by this Code or other applicable state law.

**§ 17.110.060 - § 17.110.090 RESERVED.**

**§ 17.110.100 PERSONAL CULTIVATION OF CANNABIS.**

Personal cultivation of cannabis shall comply with the following:

- A. No more than six cannabis plants per private residence are allowed to be cultivated, whether indoors or outdoors upon the grounds of a private residence, regardless of the number of individuals residing at the residence. However, outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot.
- B. *Outdoor Cultivation.* Outdoor personal cultivation of cannabis shall comply with the following standards:
  1. Outdoor cannabis plants shall be located a minimum of five feet from property lines.

2. Outdoor cannabis plants shall be located only in the rear and side yards of a lot, and are not permitted to be located in front yards of any lot.
3. No cannabis plants cultivated shall be visible from a public right-of-way or any other public place by normal unaided vision.
4. No cannabis plants cultivated shall exceed seven feet in height.
5. The area used for cannabis cultivation shall be contained within a locked space (e.g. enclosed within a locked gate).
6. Any lot upon which cannabis plants are cultivated shall have fencing of no more than six feet in height surrounding the lot or that portion of the lot upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with cannabis cultivation.
7. Outdoor cultivation is prohibited on parcels within 200 feet of any school or day care center.

C. *Indoor Cultivation.* Indoor personal cultivation of cannabis shall comply with the following standards:

1. Plants shall be contained within a locked space of a fully enclosed and secure structure, as defined, either within the primary residence or within an accessory structure on the same lot as the primary residence.
2. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO<sub>2</sub>, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.
3. All electrical equipment used in the cultivation or processing of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of cannabis is prohibited.
4. All cannabis cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.
5. Shall not be conducted in a manner that results in the creation of mold or mildew inside the residence or the accessory structure.

D. *General.* All personal cultivation of cannabis, whether indoors or outdoors, shall comply with the following generally applicable standards:

1. A copy of documentation of qualified patient status must be maintained at any location at which medical cannabis cultivation occurs. If cultivation is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the location where medical cannabis cultivation occurs.

2. The residence shall maintain fully functional and usable kitchen, bathrooms, and bedrooms for their intended use, and the premises shall not be used primarily or exclusively for cannabis cultivation.
3. No cannabis cultivation area shall be maintained or operated in such a way as to adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes. A public nuisance may be deemed to exist, if such cultivation activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the residence from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.
4. Any cannabis cultivation that would require a license or permit from the State of California per the Medical and Adult-Use Regulation and Safety Act (Cal. Business and Professions Code, Division 10) is prohibited within the Town of Fairfax.

**§ 17.110.110 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.**

- A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section 17.110.100, subdivisions (A) or (B)(7).
- B. Any request for a medical cannabis administrative exception shall be submitted to the Town Manager, along with documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, demonstrating why the standard required by Section 17.110.100, subdivisions (A) or (B)(7), is not feasible.
- C. The Town Manager may grant a medical cannabis administrative exception only if the following findings can be made:
  1. The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;
  2. The requested exception shall not constitute a public nuisance, as set forth in § 17.110.100(D).
  3. For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers, code-compliant electrical systems or one-hour firewall assembly.
  4. The cultivation of no more than ten (10) cannabis plants shall be authorized through a medical cannabis administrative exception.
- D. The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the Town. Approval of the

requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.

- E. Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.
- F. Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § 17.110.110 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of subdivision (C) above, and subject to any conditions imposed per subdivision (D) above.

#### **§ 17.110.120 ENFORCEMENT.**

- A. *Public nuisance.* The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. *Seizure and destruction of cannabis.* To the extent authorized by state law, all cannabis seized by the Town Police in the enforcement of this Chapter shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for cannabis possessed in violation of Division 10 of the Health and Safety Code.
- C. *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this Chapter. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the Town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.
- D. *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Chapter, or to restrain or abate any violation of the provisions of this Chapter as a public nuisance.
- E. *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this Chapter or to abate a public nuisance.

#### **§ 17.110.130 LIABILITY.**

The provisions of this Chapter shall not be construed to protect the property owner(s) of record, or their lessees, tenants or other participants engaged in the personal cultivation of cannabis or commercial cannabis uses from prosecution pursuant to any state or federal laws regulating or prohibiting such activities. The property owner(s) of record, or their lessees, tenants and other participants, assumes any

and all risk and all liability that may arise or result under state and federal laws from the cultivation of cannabis or commercial cannabis activities conducted on such property.



# REDLINE OF PROPOSED ZONING ORDINANCE MAY 1, 2019 VERSION VS. JUNE 5, 2019 VERSION

## CHAPTER 17.110: CANNABIS USES

### § 17.110.010 PURPOSE.

The purpose of this Chapter is to impose zoning restrictions on various commercial cannabis businesses authorized and/or licensed by the State of California and personal cultivation of cannabis activities authorized pursuant to state law. This section is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding cannabis businesses that may operate in the Town and personal cannabis cultivation activities pursuant to this Code and state law. This Chapter is in addition to any other business license and regulatory requirements imposed on cannabis businesses by this Code or other applicable state law.

### § 17.110.020 DEFINITIONS.

For purposes of this Chapter, the following definitions apply:

- A. “Adult-use cannabis” or “adult-use” means cannabis or cannabis products intended to be used for non-medical purposes by persons twenty-one years of age or older in conformance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10) and the provisions of State law regarding cannabis use and sale (Health and Safety Code, §11362.1 et seq.), as each may be amended from time to time.
- B. ~~A.~~ “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” includes “cannabis” as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code. “Cannabis” shall not include industrial hemp as defined by Section 11018.5 of the Health and Safety Code.
- C. ~~B.~~ “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. For purposes of commercial cannabis cultivation, the term “cannabis cultivation” also includes processing, rolling, storing, packaging, and labeling of non-manufactured cannabis products.
- D. ~~C.~~ “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- E. ~~D.~~ “Cannabis distribution facility” means any facility engaged in the procurement, temporary storage, non-retail sales, and transport of cannabis and cannabis products between State-licensed cannabis businesses and any other activity allowed under the State distributor license(s), including, but not limited to, quality control and collection of State cannabis taxes.

- F. ~~E.~~ "Cannabis manufacturing" means the compounding, blending, extracting, infusing, or otherwise making, preparing or packaging a cannabis product. Cannabis manufacturing includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- G. ~~F.~~ "Cannabis microbusiness" means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.
- H. ~~G.~~ "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001.
- I. ~~H.~~ "Cannabis retailer" means a facility or premises where cannabis or cannabis products are offered, either individually or in any combination, for retail sale or other sales or transfer to consumers, including an establishment that delivers cannabis and cannabis products as part of a retail sale. For purposes of this Section, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended. Unless otherwise specified, "cannabis retailer" means both a retailer selling medicinal cannabis and medicinal cannabis products to patients with valid physicians' recommendations, and a retailer ~~providing~~ selling adult-use cannabis and cannabis products for adults twenty-one (21) years of age and older. The term "cannabis retailer" includes both storefront retailers and delivery-only retailers unless otherwise specified.
- J. ~~I.~~ "Cannabis testing laboratory" means a laboratory, facility, entity, or site that offers or performs tests or testing of cannabis or cannabis products.
- K. ~~J.~~ "Commercial cannabis use" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, §26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include the activities of a qualified patient or a primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, § 26033.
- L. ~~K.~~ "Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, as defined Sections 1596.76 and 1596.750 of the Health and Safety Code.
- M. ~~L.~~ "Delivery-only retailer" means a cannabis retailer that conducts cannabis sales exclusively

through cannabis delivery from a fixed, physical location that is closed to the public. Also known as a "non-storefront retailer."

- N. M. "Fully enclosed and secure structure" means a space within a dwelling unit that complies with the California Building Code, as adopted in the town ("CBC"); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot containing a dwelling unit, having a complete roof and enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. In order to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.
- O. N. "Indoor" means within a fully enclosed and secure structure.
- P. O. "Medicinal cannabis" or "medical use" means cannabis or cannabis products intended to be used for medical purposes in accordance with the Compassionate Use Act of 1996 (California Health &and Safety Code §11362.5) and the Medicinal Marijuana Program Act (California Health &and Safety Code §11362.7 *et seq.*), as each may be amended from time to time.
- Q. P. "Outdoor" means any location not within a fully enclosed and secure structure, such as a location exposed to the open air ~~not~~ within an enclosed structure or building a greenhouse.
- R. Q. "Personal cultivation" means cultivation of cannabis for a natural ~~person's~~ person's own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. "Personal use" also means and includes cultivation of medicinal cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis, or by a cannabis cooperative association or any of its members.
- S. R. "Primary caregiver" shall have the same meaning as the term "primary caregiver" defined in Cal. Health and Safety Code § 11362.7, as may be amended from time to time.
- T. S. "Private residence" means house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes, or as defined in Cal. Health and Safety Code § 11362.2, as may be amended from time to time.
- U. T. "Qualified patient" means and includes both a "qualified patient" and a "person with an identification card" as each term is defined in Cal. Health and Safety Code § 11362.7, as amended from time to time.
- V. U. "School" means of a school providing instruction in kindergarten or any grades 1 through 12

(whether public, private, or charter), but does not include any private school in which education is primarily conducted in private homes.

- W. ~~V.~~ “State commercial cannabis license” means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended, and includes both an A-license and an M-license, as well as a testing laboratory license.
- X. ~~W.~~ “Storefront retailer” means a cannabis retailer that conducts cannabis sales at a business premises that is open to the public, and may also conduct cannabis delivery as part of a retail sale.
- Y. ~~X.~~ “Sell,” “sale,” and “to sell” include any transaction, whereby, for any consideration title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from who the cannabis or cannabis product was purchased.
- Z. “Tutoring center” means a facility that is primarily used to provide supplemental teaching and educational instruction for students in kindergarten or any grades 1 through 12, but is not a school or a private home school in which education is primarily conducted in private homes.
- AA. ~~Y.~~ “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. This definition shall not include any private martial arts, ~~private tutoring center~~, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, ~~deeter's~~doctor's office primarily serving children, or a location which is primarily utilized as an administrative office for youth programs or organizations.

#### **§ 17.110.030 COMMERCIAL CANNABIS ACTIVITIES PROHIBITED UNLESS SPECIFICALLY AUTHORIZED BY THIS CHAPTER**

- A. All commercial cannabis uses as defined herein (other than as provided under Business and Professions Code Sections 26054(c) and (d), 26080(b), and 26090(e)) are prohibited from establishing or operating in all zoning districts within the Town of Fairfax except and unless expressly permitted by and in conformance with the provisions of this Chapter and/or Chapter 5.56.
- B. All commercial cannabis uses permitted by this Chapter must, prior to establishing and operating any such commercial cannabis use, obtain and maintain at all times (1) a valid state commercial cannabis license, (2) a commercial cannabis business permit pursuant to Title V, Chapter 5.56 of this Code and (3) any other local or regulatory licenses or permits required by this Code or state law.

#### **17.110.040 CANNABIS RETAIL USES.**

- A. ~~A.~~ Cannabis retailers may be permitted subject to the approval of a commercial cannabis business permit pursuant to Chapter 5.56 of this Code, and provided there shall be no more than two (2) cannabis retailer locations at any one time in the following ~~zones~~use categories, or in any combination thereof:

1. Medical-use cannabis storefront retailer(s); and/or
2. Delivery-only retailer(s), which may be medical-use, adult-use or both.

This limit shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, and continues to operate, and which may be permitted to conduct adult-use cannabis deliveries pursuant to Section 17.110.050 (“Adult-Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries”), below. One retail location may consist of side-by-side licensed premises as defined in 16 California Code of Regulations, Section 5025, in order to permit the licensing and operation of both a medical use storefront retailer and adult-use delivery-only retailer by a single operator.

B. Cannabis retailers may be permitted in the following zones:

1. Medical-Use Cannabis Storefront Retailers: Highway Commercial (CH) and Central Commercial (CC).
2. Cannabis Delivery-Only Retailers: Highway Commercial (CH), Central Commercial (CC) and Limited Commercial (CL).

C. ~~B.~~ Cannabis retailers shall not be allowed within the specified distances to the following uses that are in existence at the time the cannabis use is established. Specifically, a cannabis retailer shall not locate or establish:

1. Medical-Use Cannabis Storefront Retailers: Within a 600-foot radius of a school, day care center, or youth center or within 250-foot radius of a tutoring center. (See Business and Professions Code, § 26054.)
2. Cannabis Delivery-Only Retailers: Within a ~~600~~250-foot radius of a school or within 250-foot radius of a tutoring center. Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for cannabis delivery-only retailers near day care centers or youth centers, or other potentially sensitive uses, beyond the ~~radius~~radii contained herein.

The distances specified in this Section shall be the horizontal distance measured in a straight line from the property line of the ~~school, day care center, or youth center~~ specified use to the closest property line of the lot on which retailer is to be located without regard to intervening structures. (See Business and Professions Code, § 26054(b); Health ~~&~~and Safety Code, § 11362.768(c).)

D. ~~C.~~ Cannabis retailers shall meet all standards for development in the underlying zoning district, in the ~~Town's~~Town's General Plan, and in any applicable specific plans or master plans, and in addition:

1. ~~1.~~ Parking shall be provided in accordance with the following:
  - i. Medical-Use Cannabis Storefront Retailers: Town Code § 17.052.030(F) for retail and personal service stores at a rate of three spaces for the first 500 square of gross floor area and one space for each additional 500 square feet thereafter, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.

- ii. Cannabis Delivery-Only Retailers: Town Code § 17.052.030(K) for industrial uses, including wholesale and storage: one space per two employees of the maximum shift, plus one space per delivery vehicle unless an employee vehicle is used to conduct deliveries.
- ~~2.~~ 2. Size of facility. The size of the facility shall not exceed 1,500 square feet exclusive of restroom facilities and common areas.
- ~~3. Limitation on number:~~ There shall be no more than two (2) cannabis retailer locations at any one time, ~~whether as storefront retailers or delivery only retailers, and whether selling medical use cannabis, adult use cannabis, or both. This limit shall include any medical marijuana dispensary that was legally operating as of April 3, 2018, and continues to operate, and which may be permitted to conduct adult use cannabis deliveries pursuant to Section 17.110.230 ("Adult Use Cannabis Deliveries By Certain Existing Medical Marijuana Dispensaries"), below.~~
- ~~3.~~ 4. If an application for a proposed cannabis retailer requires compliance with Chapter 17.020 ("~~Design Review Regulations~~"), then notwithstanding any provision of Chapter 17.020 to the contrary, the Planning Commission shall provide a recommendation on such design review application and final approval authority shall be vested in the Town Council. The Town ~~Council's~~ Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.020.
- ~~4.~~ 5. If an application for a proposed cannabis retailer requires a traffic impact permit pursuant to Chapter 17.056 ("~~Traffic Impact Permit~~"), then notwithstanding any provision of Chapter 17.056 to the contrary, the Town Council shall not be required to approve the methodology used in the traffic study pursuant to Section 17.056.070.
- ~~5.~~ 6. If an application for a proposed cannabis retailer requires a sign permit pursuant to Chapter 17.064 ("~~Signs~~"), then notwithstanding any provision of Chapter 17.064 to the contrary, the Planning Commission shall make a recommendation on such sign permit, and final approval authority shall be vested in the Town Council. The Town ~~Council's~~ Council's review and decision shall in all respects comply with the criteria set forth in Chapter 17.064, except signage shall be limited to a single window or wall sign that shall not exceed six square feet in area.

~~17.110.050–17.110.220 RESERVED.~~

**§ ~~17.110.230~~17.110.050 ADULT-USE CANNABIS DELIVERIES BY CERTAIN EXISTING MEDICAL MARIJUANA DISPENSARIES.**

A. ~~A.~~ A medical marijuana dispensary that was legally operating as of April 3, 2018 and is permitted by the Town to operate a medical marijuana delivery service, may operate as a permitted use in any commercial district, an adult-use cannabis delivery-only service from its then existing premises, subject to each of the following conditions:

1. ~~1.~~ The dispensary shall, prior to conducting any adult-use cannabis deliveries, obtain and maintain at all times:

- (a) A valid state cannabis license authorizing adult-use cannabis deliveries issued by the appropriate state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code, Division 10);
  - (b) A commercial cannabis business permit pursuant to Title 5, Division II, Chapter 5.56 of this Code; and
  - (c) Any other state and local licenses or permits required by this Code or state law.
2. ~~2.~~ All cannabis deliveries must conform to State laws and regulations adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act except as set forth herein regarding the State buffer zone.
3. ~~3.~~ No adult-use customers shall be permitted to access or remain in the business premises of a medical marijuana dispensary.
4. ~~4.~~ No adult-use cannabis retail sales shall be permitted to occur at the premises of a medical marijuana dispensary.

B. ~~B.~~ Pursuant to California Business and Professions Code Section 26054(b), as may be amended, the Town finds that no setback or radius is necessary for the conduct of adult-use cannabis deliveries by an eligible, existing medical marijuana dispensary pursuant to this Section, beyond the zoning regulations contained herein.

C. ~~C.~~ This Section is not intended to give any person or entity independent legal authority to operate an adult-use cannabis non-storefront retail delivery service, it is intended only to clarify the zoning restrictions regarding certain existing medical marijuana dispensaries that may conduct adult-use cannabis deliveries in the Town pursuant to this Code and state law. This Section is in addition to any other business license and regulatory requirements imposed on medical marijuana dispensaries and non-storefront retail cannabis delivery services by this Code or other applicable state law.

~~17.110.240–17.110.290~~ § 17.110.060 - § 17.110.090 RESERVED.

~~§ 17.110.300~~ 17.110.100 PERSONAL CULTIVATION OF CANNABIS.

Personal cultivation of cannabis shall comply with the following:

A. No more than six cannabis plants per private residence are allowed to be cultivated, whether indoors or outdoors upon the grounds of a private residence, regardless of the number of individuals residing at the residence. However, outdoor cultivation shall not exceed 6 plants per lot, regardless of the number of private residences located upon the lot.

B. *Outdoor Cultivation.* Outdoor personal cultivation of cannabis shall comply with the following standards:

1. Outdoor cannabis plants shall be located a minimum of five feet from property lines.

2. Outdoor cannabis plants shall be located only in the rear and side yards of a lot, and are not permitted to be located in front yards of any lot.
3. No cannabis plants cultivated shall be visible from a public right-of-way or any other public place by normal unaided vision.
4. No cannabis plants cultivated shall exceed seven feet in height.
5. The area used for cannabis cultivation shall be contained within a locked space (e.g. enclosed within a locked gate).
6. Any lot upon which cannabis plants are cultivated shall have fencing of no more than six feet in height surrounding the lot or that portion of the lot upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with cannabis cultivation.
7. Outdoor cultivation is prohibited on parcels within 200 feet of any school or day care center.

C. ~~C.~~ *Indoor Cultivation.* Indoor personal cultivation of cannabis shall comply with the following standards:

1. Plants shall be contained within a locked space of a fully enclosed and secure structure, as defined, either within the primary residence or within an accessory structure on the same lot as the primary residence.
2. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the town. Gas products (CO<sub>2</sub>, butane, propane, natural gas, kerosene, etc.) or generators may not be used indoors or outdoors.
3. All electrical equipment used in the cultivation or processing of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of cannabis is prohibited.
4. All cannabis cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards mechanical ventilation.
5. Shall not be conducted in a manner that results in the creation of mold or mildew inside the residence or the accessory structure.

D. ~~D.~~ *General.* All personal cultivation of cannabis, whether indoors or outdoors, shall comply with the following generally applicable standards:

1. A copy of documentation of qualified patient status must be maintained at any location at which medical cannabis cultivation occurs. If cultivation is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the location where medical cannabis cultivation occurs.



2. The residence shall maintain fully functional and usable kitchen, bathrooms, and bedrooms for their intended use, and the premises shall not be used primarily or exclusively for cannabis cultivation.
3. No cannabis cultivation area shall be maintained or operated in such a way as to adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes. A public nuisance may be deemed to exist, if such cultivation activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the residence from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.
4. ~~4.~~ Any cannabis cultivation that would require a license or permit from the State of California per the Medical and Adult-Use Regulation and Safety Act (Cal. Business ~~&~~and Professions Code, Division 10) is prohibited within the Town of Fairfax.

~~§ 17.110.310~~ **17.110.110 MEDICAL CANNABIS ADMINISTRATIVE EXCEPTION.**

- ~~A.~~ A. Any qualified patient or primary caregiver may seek a medical cannabis administrative exception to Section ~~17.110.300~~17.110.100, subdivisions (A) or (B)(7).
- ~~B.~~ B. Any request for a medical cannabis administrative exception shall be submitted to the Town Manager, along with documentation, such as a ~~physician's~~physician's recommendation or verification of more than one qualified patient living in the residence, demonstrating why the standard required by Section ~~17.110.300~~17.110.100, subdivisions (A) or (B)(7), is not feasible.
- ~~C.~~ C. The Town Manager may grant a medical cannabis administrative exception only if the following findings can be made:
  1. The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;
  2. The requested exception shall not constitute a public nuisance, as set forth in § ~~17.110.300~~17.110.100(D).
  3. For indoor cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers, code-compliant electrical systems or one-hour firewall assembly.
  4. The cultivation of no more than ~~eighteen~~ (~~18~~10) cannabis plants shall be authorized through a medical cannabis administrative exception.
- ~~D.~~ D. The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the Town. Approval of the

requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.

- E. ~~E.~~ Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.
- F. ~~F.~~ Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this § ~~17.110.310~~17.110.110 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of subdivision (C) above, and subject to any conditions imposed per subdivision (D) above.

#### § ~~17.110.320~~17.110.120 ENFORCEMENT.

- A. Public nuisance. The violation of this Chapter is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 1.12 of the Fairfax Town Code.
- B. Seizure and destruction of cannabis. To the extent authorized by state law, all cannabis seized by the Town Police in the enforcement of this Chapter shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code §§ 11472 through 11479, for cannabis possessed in violation of Division 10 of the Health and Safety Code.
- C. *Right of entry.* The Code Enforcement Officer, Building Official, Planning Director, Chief of Police, Fire Inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this ~~section~~Chapter. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the Town may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.
- D. *Abatement.* The Town Attorney, in the name of and on behalf of the town and/or the people of the town, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Chapter, or to restrain or abate any violation of the provisions of this Chapter as a public nuisance.
- E. *Penalties not exclusive.* The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the town from using any other remedy at law or in equity which may be available to enforce this Chapter or to abate a public nuisance.

#### § ~~17.110.330~~17.110.130 LIABILITY.

The provisions of this Chapter shall not be construed to protect the property owner(s) of record, or their lessees, tenants or other participants engaged in the personal cultivation of cannabis or commercial cannabis uses from prosecution pursuant to any state or federal laws regulating or prohibiting such activities. The property owner(s) of record, or their lessees, tenants and other participants, assumes any and all risk and

all liability that may arise or result under state and federal laws from the cultivation of cannabis or commercial cannabis activities conducted on such property.

